

Federal Communications Commission

DA 00-2483

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

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Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Littlefield, Arizona)

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MM Docket No. 99-282
RM-9710

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: October 25, 2000

Released: November 3, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Petition for Reconsideration ("reconsideration"), filed by Mountain West Broadcasting ("petitioner"), of the Report and Order ("R&O"), in this proceeding.¹ 65 FR 25463, May 2, 2000. The R&O denied the requested allotment of Channel 265C to Littlefield, Arizona. An opposition to the petition for reconsideration was filed on behalf of Death Valley Broadcasters ("Death Valley") to which petitioner responded. Petitioner also filed a Supplement to its Reply. For the reasons discussed below, we deny the petition for reconsideration.

2. Petitioner requested the allotment of Channel 265C to Littlefield, Arizona (pop. 100),² as that locality's first local aural transmission service. In response to the petition, a Notice of Proposed Rule Making ("Notice") was issued, proposing the allotment. However, as Littlefield is neither incorporated nor listed in the U.S. Census, petitioner was requested to provide specific information as to any political, social, economic, commercial, cultural, or religious organizations and services that may exist in Littlefield to substantiate its status as a community for allotment purposes. Further, petitioner was advised that failure to provide the specific information requested would result in a denial of the proposal. Based upon the total evidence submitted, we found that the petitioner had not demonstrated that Littlefield qualifies as a community for allotment purposes and therefore it would not serve the public interest to allot a channel to that locality, citing Amazonia, Missouri, 14 FCC Rcd 16060 (1999); Pleasant Dale, Nebraska (DA 99-2246), released October 22, 1999; Broadview, Montana, 14 FCC Rcd 14101 (1999); Kanarraville, Utah, 14 FCC Rcd 15962; Lupton, Michigan, 11 FCC Rcd 14428 (1996), and cases cited therein

3. In its petition for reconsideration, petitioner argues that the R&O erroneously concludes that Littlefield is not a community for allotment purposes. Petitioner urges that the information previously

¹ Public Notice of the petition for reconsideration was given June 30, 2000 (Report No. 2422).

² Population figure, supplied by the petitioner, was taken from the 1998 Rand McNally Commercial Atlas and Marketing Guide.

provided regarding Littlefield was sufficient to meet the threshold criteria for community status. In further support, petitioner now provides a list of businesses attributed to Littlefield, without street addresses, as determined from an Internet search engine (switchboard.com), as well as a statement form from three people alleging that Littlefield is a community according to the definition of that term,³ and that they and other Littlefield residents have a sense of unity and involvement in the community.

4. We deny the petition for reconsideration. Petitioner is setting forth new information on the question of whether Littlefield is a community. Section 1.429(b) of the Rules provides that petitions for reconsideration relying on facts not previously presented will be granted only under three limited circumstances. First, the facts relate to events which have changed since the last opportunity to present these facts to the Commission. Second, the facts were unknown to the petitioner and could not have been timely ascertained through the exercise of ordinary diligence. Third, the Commission determines that consideration of these facts is required by the public interest. Petitioner has not provided a basis to consider new information in this proceeding consisting mainly of names and addresses of businesses attributed to Littlefield, as well as the statements of several Littlefield residents. Such new information appears to be generally available information that could have been timely submitted at the comment level of this proceeding through the exercise of ordinary diligence. It could have also been submitted in response to oppositions filed at the Report and Order stage of this proceeding, questioning the community status of Littlefield; however, the petitioner elected not to file reply comments addressing these arguments. Our view here is further buttressed by the fact that the petitioner was explicitly notified in the Notice that “[f]ailure to provide the specific information requested will result in denial of the proposal.” Finally, we do not believe that consideration of this new material is required by the public interest. The population and areas that would have been served by Channel 265C at Littlefield will continue to receive at least five aural services and therefore are considered to be well served. See Family Broadcasting Group, 53 RR 2d 662, 669 (Rev. Bd. 1983), rev. denied, FCC 83-559 (Commission, November 29, 1983); see also LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995).⁴

5. Accordingly, IT IS ORDERED, That the above-referenced Petition for Reconsideration filed by Mountain West Broadcasting IS DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

³ Those residents define community as “A grouping of people in a distinctive geographical area.” However, the Commission has stated that mere geographical location is not sufficient to establish “community status.” See Vimville, Mississippi, 48 FR 5974 (1983), and Hannibal, Ohio, 6 FCC Rcd 2144 (1991).

⁴ To the extent that petitioner also challenges the authorization issued to Station KONY-FM, Channel 266C, Kanab, Utah, it did not file a separate petition for reconsideration of that action, which has become final. In any event, the petitioner’s concerns regarding the impact of that grant are moot in view of our action herein.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**